



## CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Consideration of Proposed Amendment To  
Massage Parlor Ordinance

MEETING DATE: September 1, 1993

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration and possible introduction of attached ordinance.

BACKGROUND: Last year, a series of appeal hearings was conducted before the City Council, involving revocation of licenses issued under Lodi's Massage Parlor Ordinance (Lodi Municipal Code Chapter 5.32). Although these matters are now all closed, the hearings brought to light a number of concerns with the present ordinance regulating massage parlors and massage technicians. To address those concerns, the attached draft was prepared.

There are a number of differences between the old and new ordinance. Some were included to give police tools to better assure massage businesses are not used merely as fronts for prostitution. Others (such as notice and hearing provisions) were changed to comply with constitutional guarantees. The more significant changes are as follows:

- ° Procedures and requirements for issuance of both technician and establishment licenses have been standardized. Under the existing ordinance, applications for technicians and establishment licenses were handled differently, with different methods of issuance and notification. This led to some confusion.
- ° The procedures for giving notice of the City's intent to deny, revoke, or suspend permits has been simplified and standardized. The need to deliver notice by certified or registered mail has been eliminated, and allows notice by first class mail instead. This is consistent with constitutional requirements.
- ° The present ordinance does not require any formal training to work as a massage technician. This has opened the door to unqualified persons obtaining licenses, and gives those engaged in prostitution the appearance of legitimacy by operating under a City-issued license. The draft ordinance would require a minimum of 200 hours in residence training, and gives present holders of massage technician licenses a 24-month grace period in which to comply.

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



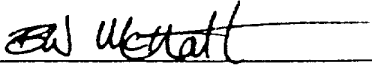
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- ° "Outcall" massage, meaning those massages given at the homes, hotel rooms, etc. of customers is prohibited completely under the draft ordinance. The new ordinance would require that massages be given only at licensed premises, or at State-licensed health care facilities. This approach is intended to discourage prostitution by making regulatory inspections easier for police to conduct.
- ° The present ordinance has no explicit provisions for "graduated" penalties. The only punishment presently specified for violations of this Chapter is revocation of licenses. By providing authority for the Chief of Police, designee, or a hearing officer to suspend licenses for up to 10 days, the punishment for relatively minor first offenses can be made more equitable under the new ordinance.
- ° Presently, appeals of the Chief of Police's actions to deny, revoke or suspend licenses are heard by the City Council. Last year's hearings, conducted at regular Council meetings before television cameras, illustrated the need to change this procedure. As proposed, the matters would be heard in a closed session by an attorney or recognized mediator retained by the City. Although this will entail some costs to the City for hiring hearing officers, that will be partially offset by minimizing inconvenience and staff time requirements for having such matters heard by the Council. Past history indicates this should not happen very often.

The Police Department has reviewed the draft and has commented. Those suggestions have been incorporated into the present draft. It is felt that the new ordinance better addresses community concerns, while protecting the constitutional rights of applicants or licensees.

FUNDING: Unknown.

Respectfully submitted,

  
\_\_\_\_\_  
Bob McNatt  
City Attorney

BM/vc

Attachment

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI  
REPEALING AND REENACTING CHAPTER 5.32 OF THE LODI MUNICIPAL CODE,  
CONCERNING THE LICENSING AND REGULATION OF  
MESSAGE PARLORS AND MESSAGE TECHNICIANS.

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Chapter 5.32 of the Lodi Municipal Code is hereby repealed  
in its entirety and a new Chapter 5.32 is hereby enacted to read in  
full as follows:

Chapter 5.32

MESSAGE PARLORS

Section 5.32.010 Authority.

The provisions of this Chapter are adopted pursuant to Article  
11, Section 7 of the California Constitution, and under Government Code  
Section 51031 as it now exists or may later be amended.

Section 5.32.020 Applicability.

A. Subject to the exceptions stated below, the provisions of  
this Chapter shall apply to all persons and entities engaged in the  
activities described herein, whether or not they were licensed by the  
City for such activities prior to the effective date of this ordinance.

B. All persons who, prior to the effective date of this  
ordinance, were licensed by the City of Lodi as Massage Technicians  
shall have a period of twenty four (24) months from and after the  
effective date hereof to present proof to the City licensing authority  
that all further or additional education or training requirements  
imposed hereunder have been met, and shall pay the fees for licensing  
and investigation due. During such twenty four (24) month period,

holders of previously-issued Massage Technician licenses may continue such licensed activities otherwise in compliance with this Chapter.

C. All permits for massage establishments issued by the City prior to the effective date of this ordinance shall remain valid until surrendered, cancelled or revoked under the terms of this Chapter. No further fee shall be required.

Section 5.32.030 Definitions.

A. "Massage" shall mean the act of touching, rubbing, bathing, stroking, or manipulating of any part of the human body, manually or by vibrator, roller or similar device, or the application of any lotion, alcohol or oil rub, electric or magnetic treatment applied to any portion of the human body for consideration or fee. It shall not include any services or treatment provided by a properly licensed physician, surgeon, osteopath, chiropractor, nurse, physical therapist, or other State-licensed health care professional while actually engaged in the practice of such profession, nor to the students of such professions while actually attending an accredited school.

B. "Massage establishment" shall mean any premises or place of business where there is conducted any activity described in Paragraph A above, whether open to the public or as a membership club.

C. "Massage Technician" shall mean any person, male or female, who in connection with the activities of a massage establishment licensed hereunder administers to any other person a massage, lotion, alcohol or oil rub, manipulation procedure, or other service described in Paragraph A above.

D. "Outcall massage service" shall mean providing any of the services listed in Paragraph A above from or at any place or location other than (1) a fixed place of business licensed as such under this

Chapter as a massage establishment, or (2) a hospital or health care facility licensed as such by the State of California.

E. "Recognized school of massage" shall mean a school duly licensed and recognized by any state or local government agency in the United States, offering diplomas or certificates in massage therapy, or techniques, which requires for graduation a minimum of two hundred (200) hours of resident study over a course of not less than three (3) months.

Section 5.32.040 Compliance.

It shall be unlawful and a misdemeanor for any person or firm to engage in, conduct, or carry on within the City, any business as a massage establishment or to act as a Massage Technician without first obtaining and possessing a valid permit issued pursuant to this Chapter, or without complying with all regulations contained in this Chapter.

Section 5.32.050 Business license required.

Nothing in this Chapter shall constitute a waiver of the requirements of Chapter 5.04 of this Code requiring issuance and possession of a business license.

Section 5.32.060 Permit applications: Requirements.

All applicants for a massage establishment permit or Massage Technician's permit shall file with the Chief of Police on forms provided by the City, an application containing the following:

1. The full name and present address of the applicant;
2. The full names and addresses of all principals or persons who will own more than five percent (5%) of the massage establishment for which the application is sought;

3. The addresses of residence for the last five (5) years, if different than in Number 1 above, for all applicants and principals;

4. Physical description of the applicant;

5. Current photograph of the applicant, including front and profile, and two sets of fingerprints.

6. The name under which the business will operate if the application is for an establishment permit or, if the application is for a Massage Technician's permit, any other names or nicknames under which the person has been known.

7. Proof of graduation from a recognized school of massage, as defined in this Chapter, if the application is for a Massage Technician's permit.

8. Written proof that the applicant is at least eighteen (18) years of age.

9. Any criminal convictions of the applicant during the past ten (10) years.

10. Any proceedings in Lodi or elsewhere to suspend, revoke, or void a permit for Massage Technician's permit or massage establishment permit held by the applicant, including the reasons therefor, whether or not such proceedings resulted in the actual suspension, revocation, or voiding of such license.

#### 5.32.070 Fees.

At the time of filing an application for a permit for Massage Technician or massage establishment, the applicant shall pay a fee in accordance with the schedule set from time to time by resolution of the City Council. Such fee shall include but not be limited to all costs reasonably incurred in the investigation and issuance of such permits.

5.32.080 Investigation by police.

A. Prior to issuance of a permit for Massage Technician or massage establishments, the Chief of Police or designee shall conduct a background investigation of the applicant and the premises where the business is to be conducted. It shall be grounds for denial of a permit if:

1. The proposed premises are not appropriately zoned for such use;

2. The applicant or any person owning five percent (5%) or more of the business has been convicted of any felony or any crime of moral turpitude including but not limited to prostitution, pandering, pimping, lewd conduct, any sex crime requiring registration under Penal Code Section 290, fraud, embezzlement, theft, violation of any law regarding controlled substances, whether such convictions occurred under California law or similar statutes from other jurisdictions.

3. The applicant or any person owning five percent (5%) or more of the business has had any license or permit to conduct a massage establishment or act as a Massage Technician revoked in Lodi or any other jurisdiction within the past five (5) years.

B. The Chief of Police or designee shall also ascertain with the City Planning and Community Development Department whether or not the premises are suitable, proper, and adequate to comply with all applicable zoning and land use ordinances or laws.

5.32.090 Grant or denial.

A. Within thirty (30) days of the filing of an application hereunder, the Chief of Police or designee shall review the application, conduct an investigation if required, and either:

(1) Issue the permit; or



(2) Deny the permit providing written notice of the reasons therefor.

B. Denial of a permit shall be appealable under the terms and procedures found in Section 5.32.140 of this Chapter.

5.32.100 Permits non-transferable; Duration of permit.

No permit issued under this Chapter, whether for a massage establishment or Massage Technician's permit shall be transferable or assignable in any manner, whether by operation of law, or otherwise. No permit for a massage establishment shall be transferable from location to location or person to person. Permits issued hereunder shall be valid until surrendered or revoked.

5.32.110 Grounds for suspension, revocation or denial.

A permit issued under this Chapter for a Massage Technician's permit or massage establishment may be denied, suspended or revoked, on any of the following grounds:

1. Failure to meet minimum requirements under this Chapter;
2. Repeated violations of the provisions of this Chapter by the permittee, applicant or principal. For purposes of enforcement, "repeated violations" shall mean two (2) or more violations of this Chapter, whether it resulted in a criminal conviction or not, during any twelve (12) month period as long as the elements of such violation can be proven by a preponderance of credible evidence;
3. A violation by the applicant, permittee or principal of any state law involving prostitution, lewdness, pandering, pimping, any sex crime requiring registration under Penal Code Section 290, fraud, embezzlement, theft, or violation of any controlled substance statute whether under California law or similar law of another State, whether or not such violation resulted in a criminal conviction, as long as the

elements of such violation can be proven by a preponderance of the credible evidence;

4. Conviction of any felony.

5.32.120 Authority to suspend license.

The Chief of Police, designee, or the Hearing Officer shall have authority, under the procedures contained in this Chapter, to suspend the permit of a massage establishment or Massage Technician for a maximum of ten (10) calendar days for violation of the provisions of this ordinance in lieu of revocation. Permittees shall have the right to appeal such suspension pursuant to Section 5.32.140 below.

5.32.130 Notice of intent to deny, revoke, or suspend license:

Initial hearing.

A. When the Chief of Police or designee denies an application for a permit under this Chapter, or has reasonable cause to believe that a violation of this Chapter by any permittee has occurred, or that any grounds exist for the revocation or suspension of a permit, the applicant/permittee shall be notified of the City's intent to deny, revoke, or suspend such license.

B. Notice shall be given in writing by personal service or by first class mail, to the address of record provided by the applicant/permittee, mailed not less than five (5) business days prior to the proposed effective date of such revocation or suspension. The notice shall contain a proposed effective date of suspension or revocation, a brief summary of the reasons for the action, and inform the holder or applicant of a right to appear before the Chief of Police or designee to show cause why such permit should not be denied, revoked or suspended. The notice shall specify a date, time and location upon which the applicant/permittee shall have the opportunity to be heard.

Such hearing shall be conducted not more than three (3) business days after the effective date of such revocation or suspension.

C. In the case of denial of an application, the aggrieved party shall file with the Chief of Police within ten (10) days of receiving such denial, a request for hearing under this section. Such hearing shall be held not more than ten (10) days after receipt of such request.

D. Following the opportunity for the applicant/permittee to show cause why the permit should not be denied, revoked or suspended, the Chief of Police or designee shall deliver or send by first class mail to the applicant/permittee within twenty four (24) hours, either a rescission of the notice of intent to deny, revoke or suspend, or a determination to deny, revoke or suspend the license, along with the reasons therefor. If denied, the decision of the Chief of Police or designee shall become effective upon the date it was mailed or personally delivered.

#### 5.32.140 Appeal.

A. Any applicant/permittee dissatisfied with the action of the Chief of Police or designee under the previous section, may appeal such decision by delivering to the City Clerk not more than ten (10) days after the effective date of such decision, a notice of appeal, along with a brief description of the reasons therefor. The Clerk shall immediately forward such request to the City Manager for handling.

B. The City Manager shall upon receipt of the appeal set the matter for hearing before a hearing officer. The hearing officer shall be an attorney or recognized mediator designated by the City Manager. The hearing shall be scheduled for not more than thirty (30) calendar days after receipt of the appeal unless a longer time is requested or consented to by the appellant. The hearing shall not be conducted under the formal Rules of Evidence, but shall be subject to such

standards of procedure and evidence as reasonable people would utilize in the conduct of serious business.

C. The hearing officer shall, within fifteen (15) days of the conclusion of the hearing, make a written finding and decision, which shall be delivered to the City and the appellant by first class mail.

D. Any party dissatisfied with the decision of the hearing officer may carry the matter forward under the provisions for administrative mandamus (Code of Civil Procedure Section 1094.5) as it now exists or may later be amended.

5.32.150 Inspection of premises.

Any massage establishment operating under a permit issued pursuant to this Chapter shall during business hours assure that such premises used for the purposes of a massage establishment shall be readily accessible and open for inspection by law enforcement officers or other employees of the City charged with enforcement of health, safety, or penal laws.

5.32.160 Permit display.

A. A recognizable and legible sign shall be posted at the main entrance identifying the establishment as a massage establishment.

B. The permit shall be posted in a conspicuous place in such a manner that it can be easily seen by persons entering the establishment.

C. Persons acting in the capacity of Massage Technicians shall have the certificate of registration issued them in their possession during the hours they are acting as such in a massage establishment.

5.32.170 Hours of operation.

It shall be unlawful for any person to conduct or operate a massage establishment between the hours of 2:00 A.M. and 7:00 A.M. of the same day.

5.32.180 No outcall massage.

It shall be unlawful for any person or firm to provide "outcall" massage, as defined in Section 5.32.030(D), except as provided herein. All massages shall be conducted only at the place of business for which the massage establishment is licensed, or at a hospital or health care facility licensed as such by the State of California.

5.32.190 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this Chapter should be declared invalid or unconstitutional, then the original ordinances shall be in full force and effect.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and

published in the City of Lodi and shall be in force and take effect  
thirty days from and after its passage and approval.

Approved this            day of

\_\_\_\_\_  
PHILLIP A. PENNINO  
Mayor

Attest:

JENNIFER M. PERRIN  
City Clerk

=====  
State of California  
County of San Joaquin, ss.

I, Jennifer M. Perrin, City Clerk of the City of Lodi, do hereby  
certify that Ordinance No. 1585 was introduced at a regular meeting of  
the City Council of the City of Lodi held September 1, 1993 and was  
thereafter passed, adopted and ordered to print at a regular meeting of  
said Council held \_\_\_\_\_, 1993 by the following vote:

Ayes:            Council Members -  
Noes:            Council Members -  
Absent:          Council Members -  
Abstain:        Council Members -

I further certify that Ordinance No. 1585 was approved and signed by  
the Mayor on the date of its passage and the same has been published  
pursuant to law.

JENNIFER M. PERRIN  
City Clerk

Approved as to Form

BOBBY W. McNATT  
City Attorney